227.

# SUPREME COURT OF THE UNITED STATES.

## No. 130.

THIRION MAILLARD, EARNEST CAYLUS, AND HAMILLE C. ROUMAGE, PLAINTIFFS IN ERROR,

vs.

CORNELIUS W. LAWRENCE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

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GIDEON, print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the circuit court of the United States, for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Thirion Maillard, Ernest Caylus, and Camille C. Roumage, plaintiffs, and Cornelius W. Lawrence, defendant, a manifest error hath happened, to the great damage of the said Thirion Maillard, Ernest Caylus, and Camille C. Roumage, as is said, and as appears by their complaint; we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JOHN W. NELSON,
*Clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit.*

The answer of the judges of the circuit court of the United States, for southern district of New York, in the second circuit, in the within writ mentioned.

The record and proceedings, whereof mention is within made, with all things concerning the same, are hereby respectfully sent to the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of December, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-two.

JOHN W. NELSON, *Clerk.*

[REC. CXXX, D. T., 1852.]—1

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, to Cornelius W. Lawrence.

Whereas Thirion Maillard, Ernest Caylus, and Camille C. Roumage, lately issued out of the Supreme Court of the United States a writ of error, directed to the judge of the circuit court of the United States, for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between Thirion Maillard, Ernest Caylus, and Camille C. Roumage, and Cornelius W. Lawrence, a manifest error hath happened, to the great damage of the said Thirion Maillard, Ernest Caylus, and Camille C. Roumage. And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held at the Capitol, at the city of Washington, on the first Monday of December next; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-seventh.

SAML. R. BETTS.

I hereby admit due service of a copy of the within citation.
December 14th, 1852.

WM. ALLEN BUTLER,
*Defendant's attorney.*

In the circuit court of the United States, for the southern district of New York, in the second circuit.

Pleas in the circuit court of the United States, for the southern district of New York, in the second circuit, before the judges of the said court, of the term of October, 1851.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

The President of the United States sent to the judges of the superior court of the city and county of New York his certain writ of certiorari, in the words and figures following, to wit:

The President of the United States of America, to the superior court of the city and county of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States of America, for the southern district of New York, should be certified of a certain cause commenced before you against Cornelius W. Lawrence, defendant, at the suit of Thirion Maillard and oth-

ers, plaintiffs, do therefore command you, that the record and proceedings in the said cause you distinctly and openly send to the said circuit court of the United States, for the southern district of New York, at the City Hall, in the city of New York, on the 21st day of June next as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Roger B. Taney, esqr., chief justice of the Supreme Court of the United States, at the City Hall, in the city of New York, this 17th day of June, one thousand eight hundred and forty-seven.

ALEXANDER GARDINER, *Clerk.*

B. F. Butler,
*Defendant's attorney.*

At which day and place in the return of said writ mentioned, before the justices aforesaid, comes the said Cornelius W. Lawrence, defendant, by Benjamin F. Butler, his attorney, and the said judges of the superior court of the city and county of New York now here make return to the said writ of the pleadings and proceedings following; that is to say:

In the superior court of the city of New York, of May term, to wit, of the twenty-fourth day of May, in the year one thousand eight hundred and forty-seven.

City and county of New York, *ss.*

Thirion Maillard, Ernest Caylus, and Camille C. Roumage, plaintiffs in this suit, by E. H. Owen, their attorney, complain of Cornelius W. Lawrence, defendant in this suit, being in custody, &c., of a plea of trespass on the case upon promises.

For that whereas the said defendant on the first day of May, in the year of our Lord one thousand eight hundred and forty-seven, at New York, to wit, at the city and county of New York aforesaid, was indebted to the said plaintiffs in the sum of seven thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. And whereas also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the further sum of seven thousand dollars, like lawful money as aforesaid, for so much money before that time paid, laid out, and expended by the said plaintiffs to and for the use of the said defendant, and at the like special instance

and request of the said defendant; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned when the said defendant should be thereunto afterwards requested. And whereas also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the further sum of seven thousand dollars, like lawful money as aforesaid, for money before that time had and received by the said defendant to and for the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear, and indebted to the said plaintiffs in the further sum of seven thousand dollars, like lawful money as aforesaid; and being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the defendant has hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of seven thousand dollars; and therefore the said plaintiffs bring suit, &c.

E. H. OWEN, *Attorney.*

SUPERIOR COURT.

CORNELIUS W. LAWRENCE ads. THIRION MAILLARD et als. } Plea non assumpsit.

And the said Cornelius W. Lawrence, defendant in this suit, by Benjamin F. Butler, his attorney, comes and defends the wrong and injury, when, &c., and says, that he did not undertake and promise, in manner and form as the said plaintiff in this suit has above thereof

declared against the said defendant; and of this he puts himself upon the country, and the said plaintiff likewise, &c.

B. F. BUTLER,
*Attorney for defendant.*

Filed June 9, 1847.

Whereupon all and singular the premises being seen, and by the aforesaid judges of the circuit court of the United States, the said cause is proceeded in, in the said circuit court, before the judges thereof.

And the said Thirion Maillard and others, plaintiffs, put in their place E. H. Owen, their attorney; and the said Cornelius W. Lawrence, defendant, puts in his place Benjamin F. Butler, his attorney.

And thereupon the marshal of the southern district of New York is commanded that he cause to come before the next circuit court appointed to be held for the southern district of New York, in the second circuit, before the judges thereof, twelve true and lawful men, to make a jury to try the issue, &c., as above joined; the same day is given to the parties aforesaid at the same place.

At which said day and place come the parties aforesaid, by their respective attorneys aforesaid, and hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, until the term of the said court, to be held at the City Hall, in the city of New York, on the third Monday in October, one thousand eight hundred and fifty-one.

At which said last mentioned day and place, before the honorable Samuel Nelson, came the parties aforesaid, by their respective attorneys aforesaid, and the jury, whereof mention is herein made, being summoned, also came; and the jurors of the said jury being chosen, tried, and sworn, say, upon their oath, that the said defendant did not undertake or promise in manner and form as the said plaintiffs have above complained against him.

Therefore it is considered that the said plaintiffs take nothing by their said declaration, but that they be in mercy, &c., and that the defendant do go thereof without day, &c.

And it is further considered by the said court now here, that the said defendant do recover against the said plaintiff two hundred and twelve dollars and seventeen cents, for his costs and charges by him about his defence in this behalf laid out and expended, by the said court now here adjudged to the said defendant, and with his assent, according to the form of the statute in such case made and provided.

And that the said defendant have execution, &c.

Judgment signed this 3d day of April, 1852.

RICHARD E. STILWELL,
*Deputy Clerk.*

UNITED STATES CIRCUIT COURT,
*Southern district of New York.*

THIRION MAILLARD and others
vs.
CORNELIUS W. LAWRENCE.

*Bill of exceptions.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered, that at a circuit court of the United States, for the southern district of New York, held at the City Hall, in the city of New York, on the fifth day of November, in the year of our Lord one thousand eight hundred and fifty-one, before the honorable Samuel R. Betts, district judge, the issue within contained joined between the said Thirion Maillard and others, plaintiffs, and the said Cornelius W. Lawrence, defendant, came on to be tried, and the said parties, by their respective attorneys, came before the said judge, and the jurors of the said jury in this behalf duly summoned also came, and were then and there in due manner and form chosen and sworn to try the said issues.

And the counsel for the said plaintiffs, to maintain and prove the said issues on his part, produced the following witnesses and evidence, that is to say:

An entry of the merchandise imported by T. Maillard & Co., in the ship St. Nicholas, from Havre, dated New York, 5th January, 1847, signed T. Maillard & Co., containing a description of the marks, numbers, packages, and contents of the said merchandise.

The said merchandise described in said entry as consisting of 8 cases, marked TM, 10 *a* 15 37. 3000, containing worsted shawls, worsted
c
scarfs, silk handkerchiefs, and silk Pekin shawls.

The cost whereof, with the charges and commissions added at the New York custom-house, is stated in said entry to amount to $6,463, on which amount the duty of 30 per cent. was charged, amounting to $1,938 90.

A receipt for the amount of said duty endorsed on said entry, annexed to said entry, is the usual owner's oath in the printed form, subscribed and sworn by C. C. Roumage, January 6, 1847.

The plaintiffs' counsel also gave in evidence the invoice accompanying said entry, containing particular descriptions in the French language of the goods in said entry specified, said invoice bearing date, Paris, 8th November, 1846, and endorsed at the custom-house as presented on the above described entry, January 5, 1847. The return of the appraisers being endorsed on said invoice, as follows:

"8 cases manufacture of worsted, (shawls.) Signed V. Livingston."

The said V. Livingston being one of the appraisers in the New York custom-house.

Also a protest annexed to the said entry in the words following:

2275
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NEW YORK, *January* 6, 1847.

To C. W. LAWRENCE, esq.,
*Collector of the port of New York.*

SIR: We hereby protest against the payment of 30 per centum ad valorem exacted on shawls and handkerchiefs, contained in TM, 10 *a* 15, 37. 3000, eight cases imported by us in the ship St. Nicholas, as per annexed entry, and claim to receive the same upon payment of a duty of twenty-five per cent. as prescribed by the Tariff act of 1846.

We pay the amount exacted to obtain possession of the goods, claiming to have the difference refunded.

T. MAILLARD & CO.

The plaintiffs' counsel then gave in evidence the following entries of merchandise imported by T. Maillard & Co. into the port of New York, together with the respective invoices presented on said entries:

Entry of merchandise imported as aforesaid in the ship Louis Philippe, from Harve, December 26, 1846, consisting in part of worsted shawls, and worsted and cotton shawls.

Costs with charges, &c., added at custom-house, stated on entry to amount to - - - - - - $2,561 00
Duty of 30 per cent. charged and paid - - 768 30

Owner's oath endorsed on said entry and protest attached, similar to oath and protest on first above described entry, and a like return endorsed on the invoice.

Entry of merchandise imported as aforesaid in ship Iowa, from Havre, Jan. 8, 1847, consisting in part of 7 cases silk and worsted shawls, and worsted shawls; cost, charges, &c., stated on entry - $4,995 00
Duty of 30 per cent. charged and paid - - - 1,498 50

Similar oath and protest endorsed and annexed, and a like return endorsed on the invoice signed Pomeroy; said Pomeroy being one of the appraisers of the New York custom-house.

Entry of merchandise imported as aforesaid in ship Havre, from Havre, February 3d, 1847, consisting in part of 13 cases worsted shawls and barege shawls.

Costs, charges, &c., stated on entry - - - $6,133 00
Duty of 30 per cent. charged and paid - - 1,839 90

Similar oath and protest endorsed and annexed.

The return of the appraisers to the invoice produced on this and the subsequent entries, being as follows:

"Worsted shawls," silk shawls, &c., according to their fabric, except in the instance hereinafter specified.

Entry of merchandise imported as aforesaid in the ship Admiral, from Havre, February 13th, 1847, consisting in part of 2 cases of silk shawls.

Costs, charges, &c., stated on entry - - - $1,100 00
Duty of 30 per cent. charged and paid - - 330 00
Similar oath and protest endorsed and annexed.

Entry of merchandise imported as aforesaid in the ship Bavaria,

from Harve, February 13, 1847, consisting in part of 7 cases of barege, merino, worsted, and silk shawls.

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| Cost, charges, &c., stated on entry, - - - | $4,068 00 |
| Duty of 30 per cent. charged and paid, - - | 1,220 40 |

Similar oath and protest endorsed and annexed.

Entry of merchandise imported as aforesaid in the ship Bavaria, from Havre, February 19, 1847, consisting in part of 1 case silk shawls.

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| Cost, charges, &c., stated on entry, - - - | $1,598 00 |
| Duty of 30 per cent. charged and paid, - - | 479 40 |

Similar protest annexed.

Entry of merchandise imported as aforesaid in ship Baltimore from Havre, February 25, 1847, consisting in part of 9 cases worsted scarfs, worsted shawls, and silk and worsted shawls.

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| Cost, charges, &c., stated on entry, - - - | $3,968 00 |
| Duty of 30 per cent., charged and paid, - - | 1,190 40 |

Similar protest and oath annexed.

Entry of merchandise imported as aforesaid in ship Burgundy from Havre, February 24, 1847, consisting in part of 21 cases silk shawls, worsted shawls, worsted scarfs, and silk scarfs.

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| Costs, charges, &c., stated in entry, - - | $12,945 00 |
| Duty of 30 per cent, charged and paid, - - | 3,883 50 |

Similar protest and oath annexed.

The appraiser's return to the invoice produced on said entry being as follows, "Manufactures of cotton, manufactures of silk," signed "J. Willis;" said Willis being one of the appraisers of the New York custom-house.

Entry of merchandise imported as aforesaid in ship Elizabeth Ellen, from Havre, February 19, 1847, consisting of 1 case worsted and cotton shawls.

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| Cost, charges, &c., stated in entry, - - - | $781 00 |
| Duty of 30 per cent. charged and paid, - - | 234 30 |

Similar protest attached.

Entry of merchandise imported as aforesaid, in ship Jessore, from Havre, February 23d, 1847, being 1 case silk and worsted shawls.

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| Cost, charges, &c., stated in entry, - - - | $360 00 |
| Duty of 30 per cent. charged and paid, - - | 108 00 |

Similar protest attached.

Entry of merchandise imported as aforesaid in ship Elizabeth Ellen, March 11, 1847, consisting of 1 case worsted shawls.

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| Costs, charges, &c., stated on entry, - - | $1,787 00 |
| Duty of 30 per cent. charged and paid, - | 536 10 |

Similar protest and oath annexed.

Entry of merchandise imported as aforesaid in ship Jessore, from Havre, March 11th, 1847, consisting of one case silk and worsted shawls.

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| Cost and charges stated in entry, - - - | $1,262 00 |

Duty of 30 per cent. charged and paid, - - 378 60
Similar protest attached.

Entry of merchandise imported as aforesaid in ship Argo from Havre, April 2d, 1847, consisting in part of 13 cases worsted and cotton shawls, barege shawls, merino shawls, mousseline de laine shawls, silk and worsted shawls, silk shawls, and worsted shawls.

Cost, charges, &c., stated in entry, - - - $6,833 00
Duty of 30 per cent. charged and paid, - - 2,049 90
Similar protest and oath annexed.

Entry of merchandise imported as aforesaid in ship François, 1st from Havre, April 7, 1847, consisting in part of 5 cases silk and worsted shawls and scarfs, and worsted shawls.

Cost, charges, &c., stated on entry, - - - $3,215 00
Duty, 30 per cent. charged and paid, - - 964 50
Similar protest and oath annexed.

Entry of merchandise imported as aforesaid in ship Albany, from Havre, April 12th, 1847, consisting in part of 4 cases silk and worsted and worsted shawls.

Cost, charges, &c., stated in entry, - - - $2,078 00
Duty of 30 per cent. charged and paid, - - 623 40
Similar protest and oath annexed.

Entry of merchandise imported as aforesaid in ship Louis Philippe, April 20th, 1847, consisting in part of 2 cases worsted shawls.

Cost, charges, &c., stated in entry, - - - $1,452 00
Duty of 30 per cent. charged and paid, - - 435 60
Similar oath and protest attached.

Entry of merchandise imported as aforesaid in ship Zurich from Havre, April 6, 1847, consisting in part of 7 cases worsted shawls.

Cost, charges, &c., stated in entry, - - - $3,137 00
Duty of 30 per cent. charged and paid, - - 941 10
Similar oath and protest attached.

Entry of merchandise imported as aforesaid in ship Duchesse d'Orleans, May 5, 1847, consisting in part of 3 cases silk and worsted and worsted and cotton shawls.

Cost and charges stated in entry, - - - $2,192 00
Duty of 30 per cent. charged and paid, - - 657 60
Similar oath and protest attached.

The plaintiffs' counsel stated that they claimed to recover the difference between the amount of duties charged and paid on the aforesaid entries and invoices respectively, to wit, 30 per cent., and the amount of duties on the same entries and invoices, calculated at 25 per cent.

And also a difference of $276 15 on an importation of worsted and cotton and merino shawls, in the ship Duchesse d'Orleans from Havre, January 7, 1846, the entry whereof was not given in evidence; and also a difference of $38 $\frac{5}{10}$% on an importation of silk and worsted shawls in the ship Iowa, from Havre, February 15, 1847, the entry whereof was not

given in evidence, but both which entries were admitted by the counsel for the defendant to have been duly presented at the custom-house, and the duty of 30 per cent. charged and paid, under protest in writing, by the plaintiffs on the said importations; the difference between the duty of 30 per cent. so charged and paid, and the duty calculated on the same entries at 25 per cent. being admitted by the defendant's counsel to be, in the importation first above named, $276 15, and on the importation second above named, $38$\frac{50}{100}$.

The counsel for the plaintiffs then called as a witness Philip Aubernon, who testified that he was acquainted with the plaintiffs; that they were members of the firm of Thirion Maillard & Co.; that the firm was composed of Thirion Maillard, Ernest Colyus, and Camille Roumage.

The witness further testified, that he has purchased goods in France for the last four years past for the firm of Thirion Maillard & Co., going every six months to France to purchase of the manufacturers there. The entries and invoices above described being shown to the witness, he testified that he had purchased the goods described therein; that he saw the said goods packed in France, and afterwards saw them on their arrival here. Samples of goods, imported by the plaintiffs, and described in said invoices and entries, were produced by the witness, amongst which were:

A scarf, of which the component parts were worsted and silk.

Several shawls, of which the component parts were worsted and cotton.

Several shawls of worsted.

A barege scarf, of worsted and silk, and a shawl of silk.

Witness said, that these were fair samples of the goods purchased by him, and specified in the said entries and invoices; that he bought them of the manufacturers, in the State in which they now are.

Witness further said, that shawls and scarfs of this description are dyed and pressed, and put up after coming from the manufactory; they are manufactured in strips, several shawls in a single piece, joined together by the fringes, and are divided on the loom by cutting through the fringes in the middle. Witness does not understand the particular mode of manufacture.

On his cross examination the witness testified, that all the goods refer to by him in his direct examination were purchased of Mr. Thirion at Paris; Mr. Thirion buys them of the manufacturers; witness did not know whether Mr. Thirion manufactures them himself or not; he has a store at Paris.

John M. Catlin, a witness on the part of the plaintiffs, testified, that he is a clerk in the New York custom-house, and has been for eight years last past.

The counsel for the plaintiff asked the witness: Under the tariff act of 1842, under what denomination were shawls of this description classed?

The witness testified, in answer to the above question, that shawls

of worsted, silk, &c., such as the samples produced, were commercially ranged as manufactures, according to their material, namely, as manufactures of worsted, &c., and of which worsted was a component material, until the Tariff act of 1846 went into operation in December, 1846. Under the act of 1842 shawls of worsted and silk were classed under the 5th subdivision of section 1st. Shawls of cotton, or of which cotton formed a component part, were charged as manufactures of cotton, under the 2d subdivison of section 2d; and under this classification all the shawls I have named were charged with a duty of 30 per cent.

Nelson J. Elliott, a witness for the plaintiff, testified, that he is an importer of dry goods in the city of New York, and was formerly a clerk in the naval office; that he is familiar with articles of the fabric of the shawls now produced, but has made no importations of such shawls under the Tariff acts of 1842 or 1846.

Being cross examined the witness said, that these shawls were cut in two on the loom; the knots in the fringes of these shawls he supposes to be made by hand, after taking the shawls from the loom; I don't know, however, the threads of fringe composing each knotted strand might be divided while the shawl is on the loom; presume there is an equal number of threads in each strand so as to produce uniformity; witness said the fringe on the "silk shawls" seems to have been fastened to the shawl after it was made; the fringe may have been made by machinery; the fringe on the "barege scarf" seems to have been put on in the same way as that on the silk shawl, to have been added after the scarf came from the loom.

The witness further testified, that shawls of this description are used by ladies, and that they are ordinary parts of their apparel; and that he thinks some of the fringes and knots in the fringes of these silk and barege shawls were made by hand.

The direct examination being resumed, the witness said, that, in trade and commerce, articles of this description are "not considered wearing apparel;" witness said he should class as wearing apparel anything fashioned into a garment, after coming from the loom; such articles as these shawls are not regarded, amongst merchants, as articles wholly or in part made up by hand; they are not so considered in trade; they pass as shawls, under the general term of shawls; witness said waistcoats are sometimes made out of such a fabric, and such waistcoats he considered as made up; shawls are not bought and sold amongst merchants as wearing apparel.

On his further cross examination he said, that he had made no importations of shawls under the Tariff act of 1846, and had spoken in his direct testimony as to the laws of 1842 and previous, and as to the general usage of merchants, without reference to any laws; and that the shawls in question are entirely furnished by the manufacturer before they leave the factory.

The counsel for the plaintiffs here rested, and the counsel for the defendant then called as a witness:

Edward Vincent, who testified, that he is an assistant appraiser in

the New York custom-house; that he is employed in appraising French and German goods; that he appraised the shawls and scarfs mentioned in the invoices shown to him, (being the above described invoices;) witness said the returns to several of the earlier of these invoices described the goods as manufactures of silk and worsted, with the word shawls in brackets; subsequently they were described as "silk and worsted shawls," or worsted shawls, according to their fabric; witness said, that in making these returns he simply returned the fact as to what these articles were, and did not undertake to determine under what clause of the law they came.

On his cross examination the witness said he had been a clerk in the appraiser's office from 1st July, 1845, to November, 1846, and since that time an assistant appraiser. From the 1st of July, 1845, to December, 1846, these shawls were returned as silk shawls, or as silk and worsted, or worsted and cotton shawls, according to the fabric, and if hemmed or tamboured, the fact was specially noted in the return. If they were hemmed or tamboured, a higher duty was charged. If the fringe was made by hand work, "with needle and thread," they were returned for a higher duty. I know of no instance where the fringe is added by tying or looping.

Witness said the returns on the invoice by the Louis Philippe, December 21, 1846, described the shawls as manufactures of silk, worsted, &c. This method of making the return was continued about two months; has no recollection of making any return where they were described as "wearing apparel." I do not know how the knots are made.

The plaintiffs' counsel then called as a witness Samuel J. Beales, who testified that he has been a commission merchant, dealing in dry goods, for 13 years, and has received shawls similar to those on consignment. Shawls of this description are not known among merchants as wearing apparel. It is, however, among merchants that the fringes are partly made by hand, but I should not consider the term made up "applicable to them;" they are not known among merchants as articles "made up."

On being cross examined the witness said that he imported these goods as consignee; thinks he has protested against paying the 30 per cent. duty, but has not yet brought any suits against the collector.

On being shown a shawl, marked "A," he said the fringes were made on a loom separate from the shawl, and added by hand to finish the shawl.

Being shown a berege scarf, marked "B," he said that the fringe was made and put on in the same way to finish it; the same as to a white berege scarf, marked "C," and a black silk shawl, marked D.

A black worsted shawl, marked E, being shown, witness said the fringe was made on the loom, and is a part of the body of the fabric, and the knots in the fringe were tied by hand; thinks that the separation of the threads of the fringe and the twist of the strands is done by hand; he testified as to a brown worsted shawl, marked F, that it was

made in the same way; and also three other worsted shawls, marked G, I, and K.

The witness testified that these shawls are worn by women as shawls specifically, and that he considers the term wearing apparel to refer to dresses made up.

Being cross examined by plaintiffs' counsel, he said the knots in the fringes keep the thread from unravelling; they are sometimes also tied for the sake of fashion.

In a commercial sense, none of these shawls are "made up," nor are they known amongst merchants as wearing apparel.

Sumner Rust, a witness on behalf of the defendant, testified that he was of the firm of Rust, Dean & Wyes, and has been engaged in the jobbing business for 15 years; deals in dry goods, but has not dealt in shawls since 1838. Witness said that he has always considered a shawl "wearing apparel;" does not call them ready-made clothing; I include in "ready made clothing" made up goods, such as coats, pantaloons, &c.

On his cross examination he said that he did not call these shawls "made up goods;" never imported such shawls. Under the term "wearing apparel," witness should include shawls, cloaks, hosiery; a girdle for the waist, would be ornamental wearing apparel; does not think earrings or rings would be called wearing apparel, nor "handkerchiefs," nor "muffs." A blanket, when worn by an Indian, becomes wearing apparel, but "blankets" are not designed for that use. Witness spoke of shawls as they are designed "to be used."

C. S. Bogardus, a witness for the defendant, testified that he was assistant collector in the New York custom-house, from May, 1844, to 1847, and had previously been for 15 years an importing merchant. At the custom-house, wearing apparel of persons arriving in actual use is always free. Shawls of such persons are always considered as such, and admitted free of duty as wearing apparel actually in use. Witness said, that prior to 1846 there were ready-made clothing stores in this city; they never kept shawls for sale; they only kept articles "made up" by the tailor, seamstress, &c.; thinks that wearing apparel includes many things not called ready-made clothing. Wearing apparel stores, or furnishing stores for gentlemen alone, keep a different class of articles from ready-made clothing stores. Witness said, these shawls are, in my opinion, wearing apparel; if they are not, it would be hard to find any thing that is wearing apparel, except ready-made clothing, such as waistcoats, coats, pantaloons.

On his cross examination he said, under the Tariff of 1842, shawls, like these, were charged as "manufactured articles." I do not denominate earrings, rings, or pocket handkerchiefs, wearing apparel. I consider that wearing apparel includes ready-made clothing. A cloak, for instance, is both ready-made clothing and wearing apparel—the latter term includes the former. A shawl is not ready-made clothing, but it is wearing apparel.

G. W. Pomeroy, a witness on the part of the defendant, testified as

follows: I am a principal appraiser in the New York custom-house; (I was appointed in 1845;) for 12 years previous to that time I was a jobbing merchant. These shawls, in my judgment as a merchant, and in the commercial sense of the term, are wearing apparel. They are not "ready-made clothing;" ready-made clothing is made and shaped out of manufactured goods; wearing apparel is the most comprehensive term of the two.

On his cross examination he testified as follows: These shawls are not made up in a commercial sense. Work is put upon them after they come from the loom, as sewing, hemming, putting on fringes. The term "wearing apparel" covers ready-made clothing, and something more.

Moses F. Odell, a witness for the defendant, testified, that he is assistant collector in the New York custom-house; that he was appointed in June 1845; that shawls of this description are regarded as wearing apparel; under the provisions regarding wearing apparel "in actual use" they are regarded as "articles worn;" that women's shawls have always been denominated as such, and passed as such under this provision.

William W. Thomas, a witness for the defendant, testified, that he is employed in the appraiser's department—employed in the French loft; that he always considered shawls like these as wearing apparel; that they are wearing apparel, "in his judgment," and not ready made clothing; that he considers the difference, in a commercial sense, between ready made clothing and wearing apparel, this, viz., that only such articles as are "made up" by tailor or seamstress are ready made clothing, while wearing apparel includes every article of dress.

On his cross examination this witness testified that, at the custom-house, the appraisers return the article as it is—the collector assesses the duty. That he should regard sashes and pocket handkerchiefs as wearing apparel, but not gold chains.

The counsel for the defendant here rested, and the counsel for the plaintiff then called the following witnesses:

John J. Montaul, who testified that he had been fourteen years an importing merchant, of the firm of Drapers, Waters and Montaul; that these "shawls," commercially speaking, are not wearing apparel, not articles made up; that the fringes on the shawls now in court are not sewed on; that the shawls are not, commercially speaking, "made up," by having the fringe added. That he has paid duties at the custom-house, under protest, on articles with the addition of fringe.

On his cross examination this witness testified, that the shawls in question are in a complete state to be worn; that, as to the shawls marked A, B, C, and D, the fringe is added to the body of the shawl "by machinery," that is, by the aid of sticks and needles; this is done in the manufacturing establishments. That he supposed the twists in the strands to be made by fingers; the knots in the fringe of the shawl marked F, he supposed to have been made by hand.

Munro, who testified that he has been for twenty years an importer

of dry goods—for sixteen years an importer of foreign goods; that the shawls in question are not, in a commercial sense, "wearing apparel," nor articles made up wholly or in part by hand. That he thinks he knows how such shawls are made, and that there is no part of any of those in court made otherwise than by machinery, unless it be those marked K, L, M, N.

On his cross examination he said that he is not now engaged in the importing business; that these shawls are now in a condition to be worn. That as to D, there is more work on broadcloth, after it comes from the loom, than on shawls of this description. That, by machinery, he meant needles, sticks, and frames, managed by the fingers; that the fringe on the shawl marked C is made by hand; that, as to the shawls marked G and I, the knots in the fringe is made by hand.

E. H. Raymond, who testified that he is of the firm of E. H. Raymond & Co., manufacturers of clothing, engaged in making up manufactures of worsted and cotton, &c., which involve cutting and sewing; they do not manufacture the cloth. That he has purchased shawls of this description to make up into gentlemen's garments; that, commercially speaking, they are not wearing apparel, nor articles made up to be worn by men, women, and children.

On being cross examined, he said that the shawls in question are in a finished condition, and are worn by women; that he did not purchase the shawls spoken of in his direct examination as ready made clothing.

Robert Simmon, who testified that he imports shawls of this description; that in trade and commerce they are not articles made up by hand wholly or in part, nor are they considered wearing apparel.

On his cross examination he said that they are manufactured articles, and are articles of dress worn by women; that they are in a complete state, and that he has paid the duty of thirty per cent., under protest, upon similar importations.

William Ward, who testified that he has been employed in the establishment of Renard & Co. as a clerk for twelve years; that he is familiar with shawls of this description; that they are not known in trade and commerce as wearing apparel, nor as articles made up wholly or in part by hand.

On his cross examination he said that he had paid the duty of thirty per cent., on similar importations, for the house of Renard & Co.

John A. Underwood, who testified that he has been an importer for twenty years; that he is familiar with shawls of this description; that, commercially speaking, they are not known as wearing apparel, nor as articles made up.

On his cross examination he said that he had paid the duty of thirty per cent. on similar importations, under protest.

Henry L. Selden, who testified that he is in the employ of A. T. Stewart & Co.; that he is familiar with shawls of this description; that, commercially speaking, they are neither wearing apparel nor articles made up.

On his cross examination he said that the fringes to such shawls are made with sticks and needles.

John Hutton, who testified that he had been an importing merchant for eighteen years, and does not consider these shawls as wearing apparel.

The counsel for the defendant then called as a witness Isaac Townsend, who testified as follows: I am of the firm of Townsend & Brothers; I have been an importer for twenty years, and am acquainted with shawls of the description of those now in court. In trade and commerce I should consider such shawls as articles of dress, in a perfect state, ready to be worn. I should not call them ready made clothing; this term is generally applied to men's attire; I should call them wearing apparel.

Being cross examined he said, I do not think I ever heard the term wearing apparel applied to them. We import blankets for Indians; such blankets are not, commercially speaking, wearing apparel.

The counsel for the plaintiffs then called the following witnesses:

William Kobbe, who testified that he is an auctioneer, and has been an importer of foreign goods; that he is familiar with shawls of this description; that they are not, commercially speaking, considered as wearing apparel, nor as articles made up.

On being cross examined he said, that he had made no importations of such shawls since 1846.

Edward D. Beaumont, who testified that he is a merchant tailor, and buys shawls of this description to make up into waistcoats and dressing gowns; that he thinks that shawls are not wearing apparel till they are made up in this way; they are not made up more than a Mack*araw* blanket.

Richard B. Brown, who testified that he was employed in the custom-house from 1841 to 1844, and has never known such shawls described as "wearing apparel."

On being cross examined he said, that the term ready made clothing included garments made for use; that he has no recollection of seeing the term ready made clothing in a foreign invoice; articles coming under that denomination are usually described specifically as coats, vests, &c.; that he has usually received the term wearing apparel as synonymous with, or an extension of, the idea of ready made clothing; that he does not know that there has come to be any commercial meaning attached to the term since 1846.

The evidence being closed, the counsel for the defendant insisted, as matter of law, and prayed the court to charge and instruct the jury as follows:

First. That shawls and scarfs, suitable, and adapted in the state they are imported, to be worn by women on the person, as an article of dress, and usually so worn by women in the United States, are "wearing apparel," "made up" or manufactured wholly or in part by the tailor, seamstress, or manufacturer, within the true meaning of schedule C, of the Tariff act of the 30th July, 1846, and are properly charge-

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able with the duty of thirty per centum ad valorem prescribed by said schedule C.

Second. That shawls and scarfs of the description above named are not the less wearing apparel, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, within the true meaning of the said schedule, though sometimes purchased by clothiers and tailors to be made up into vests, dressing gowns, and other garments, as testified to by the witnesses for the plaintiffs in this case.

Third. That shawls and scarfs of the description above named are wearing apparel, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, within the true meaning of the said schedule C, notwithstanding, at the date of the passage of the said act of July, 1846, they may not have been called or known by commercial men in trade and commerce by the name of wearing apparel.

Fourth. That whatever may have been, at the date of the said act, the definition given by commercial men to the term "wearing apparel," shawls and scarfs of the description above named are nevertheless wearing apparel, made up in whole or in part by the tailor, sempstress, or manufacturer, within the true meaning of the said schedule C.

Fifth. That shalls or scarfs suitable and adapted in their state as imported, to be worn by women and children, of whatever material composed, having fringes added by hand to the body of the shawls after the same has come from the loom, with sticks or needles, or other such implements, altho' according to commercial usage and understanding that said articles are not thereby charged in their commercial sense or acceptation, are articles worn by women and children made up, or made wholly or in part by hand within the true meaning of the said schedule C, and are therefore chargeable with the duty of 30 per centum ad valorem, prescribed by said schedule C.

Sixth. That shawls and scarfs of the description above named, in the fringes of which, after the body of the shawl has come from the loom, knots are made by hand as a part of such fringes, or the fringes of which are twisted or otherwise completed by hand, although, according to commercial usage and understanding, the said articles are not thereby changed in their commercial sense or acceptance, are nevertheless articles worn by women and children made up, or made wholly or in part by hand, within the true meaning of the said schedule C, and are therefore chargeable with the duty of 30 per centum ad valorem, prescribed by the said schedule C.

And thereupon his honor, the presiding judge, charged the jury in accordance with the several prayers in conformity with which the defendant's counsel had insisted as matter of law.

And thereupon the counsel for the plaintiffs excepted to said ruling of the court upon each of the said prayers. The counsel for the plaintiffs also insisted as matter of law, and prayed the court to charge and instruct the jury, as follows:

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On being cross examined he said, that the term ready made clothing included garments made for use; that he has no recollection of seeing the term ready made clothing in a foreign invoice; articles coming under that denomination are usually described specifically as coats, vests, &c.; that he has usually received the term wearing apparel as synonymous with, or an extension of, the idea of ready made clothing; that he does not know that there has come to be any commercial meaning attached to the term since 1846.

The evidence being closed, the counsel for the defendant insisted, as matter of law, and prayed the court to charge and instruct the jury as follows:

First. That shawls and scarfs, suitable, and adapted in the state they are imported, to be worn by women on the person, as an article of dress, and usually so worn by women in the United States, are "wearing apparel," "made up" or manufactured wholly or in part by the tailor, seamstress, or manufacturer, within the true meaning of schedule C, of the Tariff act of the 30th July, 1846, and are properly charge-

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Second. That shawls and scarfs of the description above named are not the less wearing apparel, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, within the true meaning of the said schedule, though sometimes purchased by clothiers and tailors to be made up into vests, dressing gowns, and other garments, as testified to by the witnesses for the plaintiffs in this case.

Third. That shawls and scarfs of the description above named are wearing apparel, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, within the true meaning of the said schedule C, notwithstanding, at the date of the passage of the said act of July, 1846, they may not have been called or known by commercial men in trade and commerce by the name of wearing apparel.

Fourth. That whatever may have been, at the date of the said act, the definition given by commercial men to the term "wearing apparel," shawls and scarfs of the description above named are nevertheless wearing apparel, made up in whole or in part by the tailor, sempstress, or manufacturer, within the true meaning of the said schedule C.

Fifth. That shalls or scarfs suitable and adapted in their state as imported, to be worn by women and children, of whatever material composed, having fringes added by hand to the body of the shawls after the same has come from the loom, with sticks or needles, or other such implements, altho' according to commercial usage and understanding that said articles are not thereby charged in their commercial sense or acceptation, are articles worn by women and children made up, or made wholly or in part by hand within the true meaning of the said schedule C, and are therefore chargeable with the duty of 30 per centum ad valorem, prescribed by said schedule C.

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And thereupon his honor, the presiding judge, charged the jury in accordance with the several prayers in conformity with which the defendant's counsel had insisted as matter of law.

And thereupon the counsel for the plaintiffs excepted to said ruling of the court upon each of the said prayers. The counsel for the plaintiffs also insisted as matter of law, and prayed the court to charge and instruct the jury, as follows:

First. That if the jury shall find from the evidence that the shawls in

question were known at the date of the passage of the said act of 30th July, 1846, in trade and commerce as "manufactures of worsted," or of which worsted was a component material, that then they are embraced in schedule D, and are only liable to a duty of 25 per centum ad valorem and no more.

Second. That if the jury shall find from the evidence that the shawls in question were not, at the date of the said last mentioned act, in a commercial sense, and according to the meaning of the term among merchants, either—

1st. Articles worn by men, women or children "made up," or made wholly or in part by hand. 2nd. Nor clothing ready made, or wearing apparel "made up," or manufactured wholly or in part by the tailor, sempstress, or manufacturer. 3d. Nor manufactures of cotton, linen, silk, wool, or worsted, embroidered or tamboured in the loom, or otherwise by machinery, or with the needle, or other process; then in either of said cases the articles in question are liable only to a duty of 25 per centum ad valorem.

Third. That if the jury shall find from the evidence that the articles in question were charged, under the act of 1842, with duty as "manufactures of combed wool or worsted," "manufactures of worsted, and manufactures of worsted and silk combined," under section 1, subdivision 1 of said act, and as "manufactures of cotton, or of which cotton shall be a component part under section 2, sub-division 2 of said act, then the articles in question are, under the act of 1846, liable to a duty of 25 per cent. ad valorem, and no more.

Fourth. That if the jury shall find from the evidence that, at the date of the passage of the said act of 30th July, 1846, the shawls in question were commercially known as "manufactures of worsted," or of which worsted was a component material, and that they were not known in trade and commerce as clothing ready made, or as "wearing apparel" made up, or manufactured wholly or in part by the tailor, seamstress or manufacturer, nor as articles worn by men, women, and children, made up, or made wholly or in part by hand, then they are chargeable with a duty of 25 per cent. ad valorem, and no more.

Whereupon his honor, the presiding judge, refused so to instruct the jury in accordance with all or any of the said several prayers, whereby the plaintiffs by their counsel had prayed the court to instruct the jury.

And thereupon the counsel for the plaintiffs then and there excepted to the refusal of the said judge to instruct the jury in conformity with the said several prayers of the said plaintiffs, and also to the charge, and instructing the jury by the said judge, in conformity with all, any, and every of the several prayers, wherein the defendant's counsel had so prayed the court to instruct the jury as matter of law.

And the jurors of the jury aforesaid thereupon found a verdict for the defendant.

And because the said prayers of the said plaintiffs, by their said counsel, and the several decisions, instructions, and charge of the said judge,

and the exceptions taken to the same, do not appear by the record of the verdict aforesaid, the plaintiffs have caused the same to be written in the bill of exceptions to be annexed to such record, and have prayed the said judge to set his hand and seal to the same. Whereupon the said Samuel R. Betts, the said judge before whom the said issue was tried, and the said exceptions were taken, has hereto set his hand and seal, this 5th day of November, in the year of our Lord one thousand eight hundred and fifty-one.

SAM'L R. BETTS. [SEAL.]

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Third. That if the jury shall find from the evidence that the articles in question were charged, under the act of 1842, with duty as "manufactures of combed wool or worsted," "manufactures of worsted, and manufactures of worsted and silk combined," under section 1, subdivision 1 of said act, and as "manufactures of cotton, or of which cotton shall be a component part under section 2, sub-division 2 of said act, then the articles in question are, under the act of 1846, liable to a duty of 25 per cent. ad valorem, and no more.

Fourth. That if the jury shall find from the evidence that, at the date of the passage of the said act of 30th July, 1846, the shawls in question were commercially known as "manufactures of worsted," or of which worsted was a component material, and that they were not known in trade and commerce as clothing ready made, or as "wearing apparel" made up, or manufactured wholly or in part by the tailor, seamstress or manufacturer, nor as articles worn by men, women, and children, made up, or made wholly or in part by hand, then they are chargeable with a duty of 25 per cent. ad valorem, and no more.

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And the jurors of the jury aforesaid thereupon found a verdict for the defendant.

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and the exceptions taken to the same, do not appear by the record of the verdict aforesaid, the plaintiffs have caused the same to be written in the bill of exceptions to be annexed to such record, and have prayed the said judge to set his hand and seal to the same. Whereupon the said Samuel R. Betts, the said judge before whom the said issue was tried, and the said exceptions were taken, has hereto set his hand and seal, this 5th day of November, in the year of our Lord one thousand eight hundred and fifty-one.

SAM'L R. BETTS. [SEAL.]